SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 574

THE RESCUE ARMY, A CORPORATION, AND CHARLES T. MURDOCK,

Appellants,

vs.

THE MUNICIPAL COURT OF THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA,

Appellee.

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA

STATEMENT OF MATTER AND GROUNDS MAKING AGAINST THE JURISDICTION OF THE UNITED STATES SUPREME COURT.

RAY L. CHESEBRO,
City Attorney,
Counsel for Appellee.

DONALD M. REDWINE,
Assistant City Attorney,
JOHN L. BLAND,
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Of Counsel.

INDEX

Topical Index

	Page
Statement of matter and grounds making against the jurisdiction of the United States Supreme Court	1
I. Statement of the case	1
II. The Gospel Army case and The Rescue Army case compared	4
A. Distinctions as to parties appellant	4
B. Distinctions as to state of the record	5
C. Distinctions between issues involved.	5
III. Murdock is not a preson injured by the ordinance	6
IV. There is no substantial federal question involved not settled by previous decisions of this Court	8
A. The ordinance is a valid exercise of the police power as a system of registration and identification	9
B. The construction placed upon the statute by the Supreme Court of California is binding upon this Court	17

Citation of Cases

Cantwell v. *Massachusetts*, 310 U. S. 296	9, 10, 19
Chaplinsky v. *New Hampshire*, 315 U. S. 568	10
Cox v. *New Hampshire*, 312 U. S. 569	10
Dart, Ex parte, 172 Cal. 47	18, 19
Davis v. *Beason*, 133 U. S. 333	9
Gospel Army v. *City of Los Angeles*, October Term, 1945, Docket No. 1216	2
Hague v. *C. I. O.*, 307 U. S. 496	4
Hanneford v. *Silas Mason Co.*, 300 U. S. 577	6
Massachusetts v. *Mellon*, 262 U. S. 447	7
Murdock v. *Pennsylvania*, 319 U. S. 105	10

	Page
Price v. *Massachusetts*, 321 U. S. 158	10, 17
Purity Extract & Tonic Co. v. *Lynch*, 226 U. S. 192	13
Senn v. *Tile Layers Protective Union*, 301 U. S. 468	17
Utah Power & Light Co. v. *Pfost*, 286 U. S. 165	6
Virginian Ry. Co. v. *System Federation No. 40*, 300 U. S. 515	7
Yick Wo v. *Hopkins*, 118 U. S. 356	11

CITATION OF ORDINANCES

Los Angeles Municipal Code, Ordinance No. 77,000	3
Los Angeles Municipal Code, Ordinance No. 77,000, Chap. II, Art. 4	4
Los Angeles Municipal Code, Ordinance No. 77,000, Chap. IV, Art. 4	3
Los Angeles Municipal Code, Ordinance No. 77,000:	
Section 44.01	21
Section 44.02	23
Section 44.03	24
Section 44.04	24
Section 44.05	24
Section 44.06	26
Section 44.07	26
Section 44.08	27
Section 44.09	27
Section 44.10	27
Section 44.11	28
Section 44.12	28
Section 44.13	28
Section 44.14	28
Section 44.15	29
Section 44.16	30
Section 44.17	30
Section 44.18	31
Section 44.19	31

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STATEMENT OF MATTER AND GROUNDS MAKING AGAINST THE JURISDICTION OF THE UNITED STATES SUPREME COURT.

The appellee respectfully submits a statement of matter and grounds making against the jurisdiction of the United States Supreme Court as follows:

I

Statement of the Case

This case is one of original jurisdiction upon prohibition in the Supreme Court of the State of California, having been transferred to such court from the District Court of Appeal after the latter court refused to issue a writ upon

the petition. Respondent filed its demurrer to the petition and also an answer thereto.

The prayer of the petition was for a peremptory writ of prohibition, addressed to the Municipal Court of the certain sections of the Los Angeles Municipal Code regulating solicitation for charitable purposes and exempting from its scope of regulation solicitation for purely religious purposes.

The ordinance provisions challenged are Sections 44.01 to 44.19 of the Los Angeles Municipal Code (Ordinance No. 77,000 of the City of Los Angeles as amended).

This action concerns the validity of the chapter and article of the Los Angeles Municipal Code which are involved in *The Gospel Army* v. *The City of Los Angeles*, October Term, 1945, Docket No. 1216, United States Supreme Court, in which case the question of jurisdiction has been continued until time of oral argument.

The questions presented in two cases are not identical, although there is perhaps an overlapping by reason of the fact that the plaintiff and appellant in each case has attempted to challenge the validity of all sections of the chapter. The cases present a situation wherein the City Attorney of the City of Los Angeles is defending two different clients in upholding the validity of the ordinance and such defense has been and at present is being handled by two different deputies of such office. This places the writer of these objections in the unfortunate position, in order to protect his client, of having to discuss certain jurisdictional points which may apply to both cases, although some of them appear not to have been urged in the *Gospel Army* case in the City Attorney's objections to jurisdiction.

The foregoing statement is made in order that the Court may fully understand that nothing herein said is

intended as or calculated to be deemed an argument in the *Gospel Army* case, irrespective of how much it could be said to apply. The right to urge in that case, at the proper time, any argument included herein is of course reserved.

Because the same ordinance is involved, it becomes necessary for us to show similarity of and distinctions between the two cases as a mean of pointing out wherein any argument heretofore made in the *Gospel Army* case (or omission from such argument) does not necessarily apply to the instant case.

Before proceeding further it is proper that we correct what we feel sure is an inadvertent misstatement in appellants' Jurisdictional Statement, at Page One, wherein it is stated that the statute involved is Ordinance No. 77,000 of the City of Los Angeles, which ordinance is entitled "Charities," and that it contains nineteen sections, etc. Ordinance No. 77,000 is officially known as the Los Angeles Municipal Code, and is entitled as follows: "An ordinance enacting a revision and codification of the regulatory and penal ordinances of the City of Los Angeles, to be known as the Los Angeles Municipal Code, providing penalties for violation of the provisions thereof and repealing all ordinances and parts of ordinances in conflict therewith."

Such ordinance consists of nine chapters, numbered I to IX, inclusive, and the chapters are subdivided into articles, divisions and sections. The exact number of sections (some of which are subdivided into subsections) is unknown to us, but it is safe to say the total number of separately numbered sections is in excess of two thousand.

The portion of the Los Angeles Municipal Code involved in this proceeding is Article 4 (Charities and Relief) in Chapter IV (Public Welfare) and consists of nineteen sections numbered 44.01 to 44.19, inclusive. However, not

all or any considerable number of such sections are actually involved herein, although a complete treatment of the sections primarily involved may require some mention by us of most if not all of the other sections. Sections 24.02 to 24.05 of such Code cover the matter of licensing Auctioneers, Secondhand Dealers and Pawnbrokers (Article 4 of Chapter II). There are no sections numbered 24.06 to 24.18.

II

The Gospel Army Case and the Rescue Army Case Compared and Distinguished

Distinction As to Parties Appellant

A

In the *Gospel Army* case the sole plaintiff and appellant is a corporation. In the instant case (Rescue Army) there are two plaintiffs, or petitioners, and appellants, one of which is a corporation and the other an individual.

It is now too well settled to admit of argument that a corporation may not complain of denial of freedom of speech (*Hague* v. *C. I. O.*, 307 U. S. 496, 514), and the same reasons which impelled such conclusion apply with equal or greater vigor to the matter of religious freedom. Religious freedom is freedom to believe in and worship a divine being. A corporation is incapable of reasoning, or believing in or worshiping a diety. The fact that a person belongs to a certain church is not proof that his religious belief is that of the corporation which owns the property, or in whose name services are held.

It follows that in the instant case, there being no property right involved, the corporation (The Rescue Army) cannot maintain an appeal.

It is conceded that, unless otherwise shown, the individual defendant can maintain his appeal.

B

DISTINCTION AS TO STATE OF THE RECORD

If we understand the decision of the California Supreme Court in the *Gospel Army* case, it is not a final judgment, in that it is not one in which there is nothing to be done in the lower court other than to execute the judgment.

While we are inclined to think the rule should be that a decision is a final decision, for the purpose of appeal to the United States Supreme Court, when it settles in the highest court of the state a federal question in such manner that it is the "law of the case" in any subsequent proceeding in the same case in a lower court, it remains a fact that, so far as we can ascertain, this court has never seen fit to so determine.

In the instant case (Rescue Army) the judgment of the state court is a final judgment. The prayer was for prohibition. Respondent Municipal Court demurred and also answered. The Supreme Court, apparently upon the demurrer, denied the peremptory writ upon the proposition, we must assume, that, irrespective of the answer, it presented a question of law only within the original jurisdiction of that court.

C

DISTINCTIONS BETWEEN ISSUES INVOLVED

Essentially the instant case (Rescue Army) involves only the right of Murdock to solicit money upon the streets and public places in the City of Los Angeles, although such appellant in the state court did, and in this court will attempt to, attach many other propositions onto the main one.

If we understand the record correctly, the *Gospel Army* case involves primarily the right of a corporation, organ-

ized and perhaps functioning as a church organization, to operate a secondhand store, and junk and secondhand goods collection business, without a license as is required of other secondhand and junk dealers and junk collectors.

Several other questions, which appear to us for the purpose of the instant case to be incidental and secondary to the prime question in the *Gospel Army* case, seem to have crept into it, but such case can, in our opinion, be fully distinguished from the instant case (Rescue Army).

Bearing the foregoing distinctions in mind, we anticipate no difficulty upon the part of the court in following us in our showing of why, in the *Rescue Army* case, the court has no jurisdiction which it should exercise.

III

Murdock Is Not a Person Injured by the Ordinance

The petition alleges that petitioner Murdock is engaged in purely religious activities.

Petition for Writ, Page 4, Paragraph V, lines 5-21.

Section 44.16 of the Los Angeles Municipal Code, insofar as here pertinent, reads as follows:

> "The provisions of this Article (Article 4 of Chapter IV, being Sections 44.01 to 44.19, inclusive), except Sections 44.01 and 44.04, shall not be applicable . . . to solicitations made solely for evangelical, missionary or religious purposes."

A person may not complain of provisions of a statute (or ordinance) which do not harm him.

Utah Power & Light Co. v. *Pfost*, 286 U. S. 165, 186.

One attacking the constitutionality of a statute is not the champion of any rights except his own.

Hanneford v. *Silas Mason Co.* 300 U. S. 577, 583.

Virginian Ry. Co. v. *System Federation* No. 40, 300 U. S. 515, 558.
Massachusetts v. *Mellon*, 262 U. S. 447, 488.

If, as he claims, Murdock was engaged in purely religious activities, he may not complain because, as to persons engaged in conduct outside the purview of the exception, some provision may be unfair. If he was in fact engaged in soliciting for charitable purposes instead of for religious purposes, he may not shield his violation of law behind a cloak of religion.

In order that there may be no misconception of our position we may as well say here as later that we believe in preserving religious freedom to the full extent which the Honorable Supreme Court of the United States has said it should be preserved, that is, absolute freedom to believe, preach and teach any religious doctrine one chooses and a right to practice any form of religion, subject to reasonable regulation in the interests of public welfare, this irrespective of whether that religion be Christian, Jewish, Mohammedan, Hindu, Shinto or fire worshippers. But, we are not ready to admit that the religious freedom provision of the Federal Constitution must be interpreted so broadly as to constitute the altar of religious freedom the bier of good order, public safety, and general welfare.

Appellant Murdock was charged in the Municipal Court only with solicitation for charitable purposes in violation of Sections 44.09 and 44.12. (All citations are to sections of the Los Angeles Municipal Code unless otherwise stated. Sections 44.01 to 44.19 of such Code are printed herewith as an appendix.)

We have found no cases by federal or state courts which hold that solicitation of charity is not subject to regulation under the police power, but we do find in the majority opinion of the California Supreme Court in *Ex Parte Dart*,

172 Cal. 47, a statement that such solicitation is subject to the police power. The language quoted by appellants from such case is not language approved by the majority of the court. However, it is to be noted that the actual conclusion of law in the minority opinion is in consonance with the position of the appellee herein, where, on page 54, Justice Henshaw, author of the minority opinion, said:

> "And the utmost limit of reasonable regulation in the matter (of charitable work) is reached by acts protecting the public from charlatans and imposters, insuring knowledge on the part of the donors of the purposes to which their contributions may be put, coupled with adequate safeguards against malversation as to the funds received."

The Supreme Court of the United States has often said, with respect to religious freedom, that the granting to administrative officers of power to determine the truth or sincerity of one's religious belief is a void act. However, we have found no cases which hold that the courts, under legislative grant, may not determine whether an act done in the *practice of religion* is one within or without the police power. If it be within the police power to regulate the solicitation of funds for charitable purposes, one who is engaged solely in religious work may not challenge the validity of provisions not applicable to him, nor challenge the power of the court to determine as a question of fact whether he was engaged in acts outside the exception in the ordinance.

IV

There Is No Substantial Federal Question Involved Not Settled by Previous Decisions of This Court

At the outset may we state that we are here confronted by an unfortunate situation not of our own choosing. The appellants, in their "Statement of grounds upon which

it is contended the questions involved are substantial" (Jurisdictional Statement, and Assignment of Errors, Pages 11 to 38, inclusive) have seen fit to discuss in some detail the merits of the case, the substance of the pleadings, answering briefs, reply briefs and *Amicus Curiae* brief, and have included rather copious quotations therefrom. We have in mind the rules of the court which require that pleadings, briefs, etc., must be concise and to the point. It has not been our understanding that the merits of a case can be thus discussed in the Jurisdictional Statement required by Rule 12 of the court, and we are confronted with what appears to us to be an alternative choice of either slight deviation from such rule or of failing to fully refute appellants' position. We sincerely ask that if it appear that our discussion of the question of jurisdiction exceeds that which is customary, consideration be given to our dilemma.

A

The Ordinance Is a Valid Exercise of the Police Power as a System of Registration and Identification

If, for the purpose of this point, we assume without conceding that the petition of appellants is sufficient to present the question of solicitation of money or property for distribution to the needy as an incident of the *practice of religion,* we find no federal question of consequence not heretofore decided by this court.

Although statutes may not undertake to control one's religious beliefs, they may circumscribe the practice of such beliefs.

Cantwell v. *Massachusetts,* 310 U. S. 296, 303;
Davis v. *Beason,* 133 U. S. 333.

The state may prevent acts which tend to interfere with orderly government even though such acts are done in the name of religion.

Cox v. *New Hampshire*, 312 U. S. 569, 575, 576;
Chaplinsky v. *New Hampshire*, 315 U. S. 568, 572;
Prince v. *Massachusetts*, 321 U. S. 158, 169.

The state may protect its citizens from fraudulent solicitations by means of provisions for registration, and regulate the time and manner of solicitations in the interest of public safety, peace, comfort and convenience.

Cantwell v. *Massachusetts*, 310 U. S. 296, 306;
Murdock v. *Pennsylvania*, 319 U. S. 105.

Perhaps the statement in the *Murdock* case, *supra*, might be classed as dicta in view of the fact that the court expressly limited its decision to the power of a state to place a *revenue tax* upon certain religious activities. However, because the statement to which we refer in such decision is consonant with other statements of the court, we think it was not intended as dicta only.

The only method by which we can adequately show that the provisions of the ordinance do not exceed the scope of legitimate exercise of the police power, is by a section-by-section analysis of the ordinance. It will be unnecessary to repeat, with respect to each section, that such section and all portions thereof, except as otherwise specifically provided, is subject to the exemptions in Section 44.16.

Section 44.01 consists of definitions only and has no bearing in this case except as interpretation of words used in other sections.

With respect to Section 44.02, naming the powers of the "Board," we anticipate no Federal question can be raised unless it be with regard to subdivision (c) thereof, which permits recall of cards for correction. If it be a reasonable regulation that solicitors carry identification cards,

it follows that there can be no constitutional objection to a provision which in effect provides that they must be truthfully made out.

Section 44.03 sets forth powers of the "Department" as distinguished from powers which must be performed by the "Board," consisting of five commissioners. If it is proper that the public be protected by being furnished information concerning solicitors and the purpose for which funds are to be used, there can be no objection to an investigation of facts alleged as reasons for such solicitations. Both provisions tend to prevent fraud.

Appellant urges as an element of jurisdiction the possibility that under these provisions the Board might hold up forever the issuance of information cards. Upon the same basis he could argue that because a jailor could refuse to release a prisoner when his sentence expires the law providing for imprisonment in jail is invalid. The bare possibility that an administrative officer can abuse his power is not alone grounds of invalidity. If it were, regulatory laws, such as the licensing of physicians and other professions, and many other laws would be invalid. The acid test is whether there is an unlawful grant of power, and construed as it must be as a grant of power to conduct a reasonable investigation, the provisions constitute reasonable provisions for the prevention of fraudulent solicitations.

In *Yick Wo* v. *Hopkins*, 118 U. S. 356, this court held that actual discrimination in the administration of an ordinance (not otherwise invalid) rendered the ordinance invalid as to those subjected to such discrimination. Farther than this we have not found this court going with any law otherwise valid.

With respect to subdivision (c) of such Section 44.03, authorizing examination of books, we admit that if there be an attempt to examine private papers which have no

tendency to shed light upon the matter of use to which receipts of solicitations are to be put, and other matters germane to the legitimate end to be accomplished, and some State court should construe the provision as permitting unlimited search of private papers, there would be a substantial Federal question arise. Construed as permitting reasonable search the provision is valid, and inasmuch as there are no allegations indicating improper exercise of the provision we should await an interpretation by the State court.

With respect to subdivision (d) of such Section 44.03, it is plain that the cost of supplying information cards is not a revenue scheme in disguise, nor does four cents per card constitute an unreasonable charge. We see no other provision in the section justifying further discussion.

Section 44.04 prohibits fraudulent solicitations. It appears hardly necessary to urge that fraudulent acts may be prohibited. At this point may we note appellants' argument that, because it is possible under other laws to punish the actual commission of fraud, there can be no valid regulation for the prevention of fraud in solicitation of charity. Suffice it to say, that prosecution for crime seldom if ever cures the wounds of the victim. Certainly the State may make reasonable regulations to prevent the practice of fraud.

Section 44.05 requires, as a condition precedent to solicitation, a notice of intention be filed. We take it to be elemental that it is not unreasonable to require one who wishes to benefit by the generosity of others to give information concerning the use to which donations will be put; the use made of previous contributions, and other pertinent information. We think there is no information required which an honest man, be he priest or layman, could object to furnishing. Certainly the fact that someone intent upon engaging in dishonest practices with re-

spect to solicitation or use of funds received, has little standing before the law to complain of the provisions thereof.

Section 44.06 provides for furnishing certain information concerning solicitors. Needless to say, the public has a legitimate interest in knowing whether, out of each dollar given to charity, nipety-five cents is to go into the pocket of the solicitor as his own money and only five cents into the treasury of the charity for which he ostensibly solicits.

Section 44.07 prohibits certain acts, the doing of which would tend to result in fraud and which could serve no legitimate purpose. Such section is well within the limits of the police power regardless of how circumscribed such limits may be.

Section 44.08 provides for the keeping of accounts. In view of the fact that money given to another for use in charity is in the nature of a trust, it cannot well be urged that the State has no power to require provisions for the accounting therefor.

Section 44.09, which is one of the sections immediately involved in the present action, prohibits, in paragraph (a) thereof, solicitation (for charity) of contributions by box or receptacle upon public streets or other public places named. It is a well known fact that solicitation in the manner prohibited has long been a system by which beggars and others of that character have imposed upon the public. The State has a right to protect the public from such imposition. The fact that there may be some persons with honest intentions who wish to use this method does not render the provision invalid.

A State, in order to carry out and effectuate a policy within the police power, may prohibit acts innocuous in themselves if such prohibition is reasonably necessary for the protection of the public.

Purity Extract & Tonic Co. v. *Lynch*, 226 U. S. 192, 201.

Said paragraph (a) does in effect provide that such solicitations may be made by permission of the Board. It being within the police power to entirely prohibit such solicitations for charity, it follows that, inasmuch as that which may be entirely prohibited may be permitted under such conditions as the Sovereign sees fit, so long as there is no discrimination in the granting of permits the provision is not void. There is no evidence or allegation of discrimination against appellants. This provision, like all others in the Article, except Sections 44.01 and 44.04, do not apply to solicitation for solely religious purposes. Whether Murdock was soliciting solely for religious purposes is a question of fact for a trial court.

Paragraph (b) of such Section 44.09 needs no discussion inasmuch as the elements have in effect been discussed in connection with other sections. In addition, we have no claim that Murdock has tried to solicit, or has any future intention of soliciting in the manner therein described.

Section 44.10, which prohibits one from using the name of another without the consent of such other, certainly does no violence to the Federal Constitution.

Section 44.11 is so nearly to the same effect as is Section 44.10 that what has been said of such section applies to Section 44.11.

Section 44.12, another section directly involved in the instant case, provides that solicitors must carry and exhibit an information card. What is more appropriate than a regulation which requires one who wishes to secure a donation to charity from another to properly identify himself and explain the purpose for which the donation is to be used? What more proper than that he present a card truthfully giving such information? The ordinance provides a reasonable and convenient method of securing such cards and does not permit or authorize any city official

to arbitrarily or otherwise deny to anyone an identification or information card upon compliance with the reasonable requirements heretofore discussed. This court has said that one who buys paint, stock food and other substances is entitled to know the constituent elements thereof. Certainly if a provision that a purchaser of goods is entitled to information for his protection, one who is going to part with funds with no return therefor other than the satisfaction of having done a good deed by helping others, is entitled to know to whom he is giving funds and the use to which they will be put. The state, in order to protect the public against imposters, has the power to provide such regulation. In our opinion this regulation comes within the class of those to which no honest man will object, and laws are not made to facilitate the growth of dishonesty.

We believe there is no need to discuss in detail Sections 44.13, 44.14, 44.15, 44.17 or 44.18. The objects and reasons for such sections obviously appear, and such objects are well within police power. Furthermore, there is nothing within the pleadings as we view them (excluding conclusions of fact and law) which tends to indicate a possibility that the appellants have been or will be adversely affected by such sections or any of them.

Likewise, Section 44.16, which consists of exceptions only, requires no discussion.

Section 44.19 regulates "promoters." Promoters are defined in Section 44.01 and in the main the definition corresponds to the commonly accepted meaning. In short, they are persons who enter into a contract whereby, for a percentage of the amount collected or other stated compensation, they agree to conduct a fund-raising campaign for a certain charity. We see no unconstitutional or even unusual situation created by a law which requires such persons to give a bond to insure that the charity will

secure the money subscribed. We see no constitutional objection to a provision which makes it possible to insure that ninety-five cents, or any other unreasonable sum, out of each dollar contributed by a generous public does not go into the pocket of the promoter. This section, like others in the Article under discussion, is subject to the exception that it does not apply to solicitation for solely religious purposes.

The burden of Murdock's plaint, as we see it, is that charity is so much a part of his belief that the requirement of the ordinance which makes it necessary for him to secure an identification card and otherwise comply with the ordinance in order to solicit funds for charity, constitutes a restriction or impairment of his religious freedom.

However broad the field of religious freedom may be, it was never intended by the founders of our country to be a shield for fraud and imposition. That the public has been duped by fraudulent charity schemes is too well known to be successfully denied. That numbers of these schemes have been conducted in the name of religion is, we think, equally well established. So far as we know the appellant Murdock may be perfectly honest in his intentions, and his work worthy of public support.

The fact that one or more persons would conduct honest solicitations is not the yardstick by which we measure police power regulations. If such were true practically all regulatory laws aimed at prevention of fraud upon the public, such as our pure food laws, laws requiring packaging in standard containers, etc., would be invalid as to honest persons and our courts would be devoting their time to determining who were honest and therefore exempt from regulation. The only requirement is that regulation apply equally to all in a given class and that such regulation be not unreasonable. As construed by the highest court of

the State of California the ordinance meets these requirements, and it follows that no substantial federal question exists. Especially is this true in view of the fact that this Honorable Court has said that there can be no objection to a scheme for registration of solicitors. If it be permissible to require solicitors to register, it is only a further reasonable requirement that they prove their identity to persons solicited and inform them of the use to which funds are to be put.

The appellants have discussed at some length the majority and dissenting opinions of the state court. Inasmuch as we deem it our duty to confine our discussion to matters going only to jurisdiction, we consider any discussion of such opinions as outside the limited field to which we are confined, because they would be discussion of the merits of the case. Our silence in this respect, however, is not to be construed as an agreement with appellants' argument.

B

THE CONSTRUCTION PLACED UPON THE STATUTE BY THE SUPREME COURT OF CALIFORNIA IS BINDING UPON THIS COURT

That this court will accept the interpretation placed upon a state statute by the highest court of the state, and will confine its examination to determining whether the statute as thus construed violates the provisions of the Federal Constitution, is now too well settled to admit of argument.

Senn v. *Tile Layers Protective Union*, 301 U. S. 468, 477;

Price v. *Massachusetts*, 321 U. S. 158, 163.

It is unnecessary to discuss in detail the decision of the state court. Suffice it to say that, as construed by such court,

the ordinance does not provide undue restraint upon the practice of religion.

Appellants' chief complaint appears to be of two kinds: (1) Possibility of delay in issuing identification cards, and (2) possibility of discrimination.

Appellants fail to distinguish between laws which permit the arbitrary denial of a right, and laws which permit the exercise of such rights under reasonable regulations, but as an incident to administration of the act give an executive board authority to relax some of the regulations which it is found that public interest requires or justifies such relaxation.

The cases heretofore decided by this court involved statutes in which some administrative authority was given arbitrary power to deny to persons the right to solicit. The ordinance involved in this case is not of that sort. Neither does it involve any religious test as a condition to the right to solicit charity for or by a religious organization or person. They may secure identification cards and solicit upon the same terms as others, and may secure the same exceptions as others. It is a matter of common knowledge in the City of Los Angeles that exceptions to the provisions of paragraph (a) of Section 44.09 have been given only to religious organizations. The provision for waiving the filing of notice of intention is so closely limited by subdivision (1) of Section 44.02 as to permit such waiver only under circumstances which will prevent imposition of fraud upon the public.

Appellants depend upon *Ex parte Dart*, 172 Cal. 47, and it becomes necessary that we correct what is no doubt an inadvertent statement concerning such case (appellants' Jurisdictional Statement and Assignment of Errors, Page 17 Under Section 3 of the ordinance then in effect the Commission could make rules and compliance with such rules

was a condition precedent to securing a permit. The Commission adopted a rule whereby the Salvation Army, as a condition to securing a permit, was required to deed all its property in the city to a local board of trustees, and spend or use within the city all money or articles received upon their solicitation, as well as other conditions with which they could not comply.

The decision of the court in the *Dart* case was based upon (1) the unlawful effect of the rule adopted by the Commission (*Ex parte Dart*, 172 Cal. 47, commencing last paragraph page 42, and ending page 53), and (2) the power of the Commission to deprive a person of the right to solicit for charity "without cause or reason" (*id.* pages 56 and 57). There is no decision that under no circumstances could a permit be required of a religious organization wishing to solicit for charitable purposes. Thereafter a new ordinance was enacted to meet the objections which the court correctly made to the then existing ordinance.

Appellants have mentioned the fact that *Amicus Curiae* brief was filed in the case at bar, but he did not tell the court that it was for and in behalf of not only the Salvation Army, but also thirteen other named organizations, a majority of which are religious organizations.

We appreciate that the fact other religious organizations favor the ordinance does not tend to support or shed light upon the constitutionality thereof. Such fact, however, sheds light upon the thread of argument throughout appellants' statement that, because the court held the ordinance involved in the *Dart* case invalid, the present ordinance should suffer the same fate.

This court has held in *Cantwell* v. *Massachusetts*, 310 U. S. 296, that a general and non-discriminatory regulation, in the public interest, of solicitation, which does not involve

any religious test and does not unreasonably obstruct or delay the collection of funds, is not open to any constitutional objection, even though the collection be for a religious purpose. However, the court has not yet defined what constitutes such an ordinance, so drawn as to protect the rights of religion and at the same time protect the rights of the general public. This no doubt because in no case heretofore submitted to your court has there been, as in the ordinance of the City of Los Angeles, a bona fide attempt to balance the rights of all persons affected and afford protection for the public, coupled with the fullest possible right of solicitation compatible with public welfare.

We verily believe that the ordinance of the City of Los Angeles comes well within the limits prescribed by the *Cantwell* case, and that such ordinance not only does not violate any of appellants' rights under the freedom of religion provisions of the Constitution, but also meets the requirements of due process.

This is a proper case for the Honorable Court, upon its own motion, to either affirm the judgment of the state court or dismiss the appeal. The appellee, however, does not make a formal motion to dismiss or affirm.

Respectfully submitted,

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CHARITIES

L. A. Municipal Code—Ord. No. 77,000

As Amended by Ordinance Nos. 80,920, 81,618, 84,121 and 88,957

Chapter 4

Article 4—Charities and Relief

Sec. 44.01. Definitions:

For the purposes of this Article, the following words are defined and shall be construed as hereafter set forth unless it shall be apparent from the context that they have a different meaning:

"Board" shall mean the Board of Social Service Commissioners;

"Charitable" shall include the words philanthropic, social service, benevolent, patriotic, either actual or purported;

"Contribution" shall include the words alms, food, clothing, money, property or donations under the guise of a loan of money or property;

"Department" shall mean the Department of Social Service;

"Person" [Added by Ordinance No. 80,920, approved March 1, 1939.] shall be construed as defined in Sec. 11.01 of this Code.

"Promoter" [Added by Ordinance No. 80,920, approved March 1, 1939.] shall mean any person who for pecuniary compensation or consideration received, or to be received, solicits or is engaged in the business of or holds himself out to the public as engaged in the business of soliciting contributions for or on behalf of any other person or any charitable association, corporation or institution, or conducts, manages or carries on or agrees to conduct, manage or carry on or is engaged in the business of or holds himself out as engaged in the business of conducting, managing or carrying on any drive or campaign for any such purpose;

provided, however, that pecuniary compensation or consideration as used herein, shall include, but shall not be limited to, participation on a percentage basis in any fund solicited, or raised, for or on behalf of any other person, firm, association or corporation; provided, further, that no person who is a bona fide paid officer or employee of a social service agency endorsed by the Board of Social Service Commissioners, shall be considered a promoter within the meaning of this article.

"Solicitation" shall mean and include the following:

(1) Any oral or written request;

(2) The distribution, circulation, mailing, posting or publishing of any handbill;

(3) The making of any announcement to the press, over the radio, by telephone or telegraph concerning an appeal, assemblage, athletic or sports event, bazaar, benefit, campaign, contest, dance, drive, entertainment, exhibition, exposition, party, performance, picnic, sale or social gathering, which the public is requested to patronize or to which the public is requested to make a contribution for any charitable purpose connected therewith;

(4) The sale of, or attempt to sell, any advertisement, advertising space, book, card, chance, coupon, device, magazine, membership, merchandise, subscription, ticket or other thing in connection with which any appeal is made for any charitable purpose or the name of any charity, philanthropy or charitable association is used or referred in any such appeal as an inducement or reason for making any such sale, or when or where in connection with any such sale, any statement is made that the whole or any part of the proceeds from any such sale will go or be donated to any charitable purpose or association.

A solicitation as defined herein shall be deemed completed when made, whether or not the person making the same receives any contribution or makes any sale referred to in this Article.

Sec. 44.02. Powers of Board:

The Board shall have the following powers:

(a) To publish results of any investigation provided for or authorized in Section 44.03, subdivisions (a), (b) and (c) of this Article;

(b) To give such publicity to any such results by such means as may be deemed best to reach the general public and persons interested;

(c) To waive the whole or part of any provisions of Sections 44.03, 44.05, 44.06, 44.10, 44.11, 44.12, 44.13, 44.15, and 44.02 excepting this subsection, of this Article for the purpose of meeting any extraordinary emergency or calamity;

(d) To request return of Information Cards to the Department upon completion of solicitation for which they are issued or at the expiration of the period for which they are valid;

(e) Upon receipt of additional information which, in the opinion of the Board, shall render incorrect any statement set forth in any such Information Card, the Board shall recall every such Information Card and amend or correct the same or issue in lieu thereof a new Information Card amended or corrected in accordance with such additional information, and that upon receipt of notification to return any Information Card for amendment or correction or new issue, as above provided, the association or person who filed the Notice of Intention for the solicitation for which any such card was issued must present such recalled Information Card to the Department within 48 hours from the time of receipt of said notification;

(f) To waive all conditions of this Article upon application of person filing Notice of Intention, in respect to Information Cards and filing copies of written authorization when a campaign or drive for raising funds for any charitable purpose is given general publicity through the press or otherwise, and when more than twenty-five (25) persons serve as solicitors without compensation, if it shall be proved to the satisfaction of the Board that the publicity concerning the solicitation fully informs the general public

and the persons to be solicited as to the facts required to be set forth on the Information Card.

Sec. 44.03. Powers of Department:

The Department shall have the following powers:

(a) To investigate the allegations of Notice of Intention, or any statement or reports;

(b) To have access to and inspect and make copies of all books, records and papers of such person, by or on whose behalf any solicitation is made;

(c) To investigate at any time the methods of making or conducting any such solicitation;

(d) To issue to all solicitors Information Cards which cards shall show:

(1) That same is issued as information for the public and is not an endorsement;

(2) The Board may, pursuant to Ordinance No. 34982, omit above provision and state that they endorse such charitable association;

(3) The pertinent facts set forth in Notice of Intention required under Section 44.05 of this Article;

(4) Any additional information obtained as shall in the opinion of the Board be of assistance to the public to determine the nature and worthiness of the purpose for which the solicitation is made;

(e) To charge a fee for supplying Information Cards, at the rate of four cents per card; provided that when more than twenty-five cards are issued at one time for the same solicitation, the fee for all such cards in excess of twenty-five shall be one cent per card.

Sec. 44.04. Fraud—Solicitation:

No person shall make or perpetrate any misstatement, deception or fraud in connection with any solicitation of any contribution for any charitable purpose.

Sec. 44.05. Charity Solicitation—Notice of Intention:

No person shall solicit, nor shall any officer or member of any association authorize any person to solicit, any con-

tribution for any charitable purpose unless, within the fiscal year of the City in which such solicitation is made and at least ten (10) days prior to the beginning of such solicitation, there shall have been filed with the Department, on a form furnished by said Department, by such person of association upon whose behalf the solicitation is made, written Notice of Intention to solicit such contribution, which notice shall contain complete information as follows:

(a) The purpose of the solicitation and use of the contribution to be solicited;

(b) A specific statement, supported by reasons and, if available, figures, showing the need for the contribution proposed to be solicited;

(c) The character of such solicitation and how it will be made or conducted;

(d) The expenses of the solicitation, including salaries and other items, if any, regardless of from what funds such expenses are payable;

(e) What portion of the contributions collected as a result of the solicitation will remain available for application to the specific purposes declared in the Notice of Intention as the object of the solicitation;

(f) A specific statement of all contributions collected or received by such person or association within the calendar year immediately preceding the filing of such Notice of Intention. The expenditures or use made of such contributions, together with the names and addresses of all persons or associations receiving salaries, wages, compensation, commissions or emoluments from such contributions, and the respective amounts thereof;

(g) The names and addresses of the officers and directors of any such association for which the solicitation is proposed to be made;

(h) A copy of the resolution, if any, of any such association authorizing such solicitation, certified to as a true and correct copy of the original of such resolution by the officer of such association having charge of the records thereof;

(i) A statement that the signers of such Notice have read and are familiar with the provisions of this Article and will require all solicitors engaged in such solicitation to

read and be familiar with all sections of this Article prior to making any such solicitation.

Sec. 44.06. Charity—Solicitor's Agreement—Notice of Intention—Additional Information:

There shall be filed with the Department with such Notice of Intention a statement of any agreement made with any agent, solicitor, promoter, manager or conductor of such solicitation, together with a copy of each agreement which may be in writing. Within twenty-four hours after any change in any such agreement or the making of any new or further agreement, a true copy of such change or agreement, if in writing, or if not, written details thereof shall be filed with the Department. Whenever, in the opinion of the Board, the Notice of Intention filed with the Department does not disclose sufficient information for the public concerning the facts hereinabove required to be stated in such Notice or concerning the person or association making such solicitation or on whose behalf such solicitation is made, then, upon the request of said Department, there shall be filed, in writing, within forty-eight (48) hours after such request, such additional information as may be required by said Board upon the foregoing subjects. Provided, however, that the Board, for good cause, may extend the time for filing such additional information. The Notice of Intention and such additional information, if requested, shall be signed by such person intending to make such solicitation, or if by or on any association, by at least two officers of such association and shall be open to the inspection of the public.

Sec. 44.07. Name of Solicitor:

No person shall use in soliciting or give to any person whomsoever, either a fictitious name or an alias or any other than his full, true and correct name, or make any such solicitation without at the time of giving to the person solicited his own full, true and correct name, nor shall he impersonate any other person in making such solicitation.

Sec. 44.08. Charitable Associations—Accounting System—Maintenance of:

No person shall solicit any contributions for or on behalf of any charitable association unless such association is maintaining a system of accounting whereby all donations to it and all disbursements made by it are entered upon the books or records of its treasurer or other financial officer.

Sec. 44.09. [As amended by Ordinance No. 84,121, approved Feb. 5, 1941.] Solicitation—Boxes—Receptacles:

(a) No person shall solicit any contribution for any purpose by means of any box or receptacle, upon any public street, sidewalk or way, or in any public park or in any publicly owned or controlled place, except by the express written permission of the Board.

(b) No person shall solicit any charitable contribution, or any contribution for any real or purported charitable purpose, by means of any box or receptacle in any place immediately abutting upon any public sidewalk or way, or in any place of business open to the public, or in any room, hallway, corridor, lobby or entranceway, or other place open to or accessible to the public, or in any place of public resort, without first filing with the Department a "notice of intention" as required by Sec. 44.05, and every person so soliciting must in all other respects comply with the provisions of this Article.

Sec. 44.10. Charitable Associations—Permission By to Solicit:

No person shall use the name of any association in charge or control of any charitable activity in any solicitation without having written permission from two of the officers of such association, to use its name or the name of or reference to such charitable activity, which written permission must be for a specific event or a specified period of time and a copy of such permission must be filed with the Department prior to any such use.

Sec. 44.11. Charitable Associations—Solicitor—Authorization, Exhibition of:

No person shall solicit in the name of or on behalf of any charitable association unless such solicitor has:

(a) Written authorization of two officers of such association, a copy of which shall be filed with the Department; and which authorization and copy shall each bear a specimen signature of the solicitor; such written authorization shall expressly state on its face the period for which it is valid which shall not exceed ninety days from the date issued;

(b) Such authorization with him when making solicitations and exhibits the same on request to persons solicited or police officers or agents of the Department.

Sec. 44.12. Solicitation—Information Card:

No person shall solicit any contributions unless he exhibits an Information Card provided for in Sec. 44.03 of this Article and reads it to the person solicited or presents it to said person, for his perusal, allowing him sufficient opportunity to read same, before accepting any contribution so solicited.

Sec. 44.13. Solicitation—Radio, Telephone, Telegraph:

No person shall solicit any contributions by printed matter or published article, or over the radio, telephone or telegraph, unless such publicity shall contain the data and information required to be set forth on the Information Card. Provided, that when any solicitation is made by telephone, the solicitor shall present to each person who consents, or indicates a willingness to contribute, prior to accepting a contribution from said person, such Information Card or a true written copy thereof.

Sec. 44.14. Solicitations—Report—Time—Expense—Uses:

Every person soliciting any contribution for any charitable purpose must file with the Department within 30 days after the close of any such solicitation or within 30 days after a demand therefor by the Department a report to the

Department, stating the Contributions secured from or as a result of any solicitation, and in detail all expenses of or connected with such solicitation, and showing exactly for what uses and in what manner all such contributions were or are to be disbursed or distributed. Every such report shall be made on forms to be furnished by the Department, and signed by the persons or association filing or obligated to file the Notice of Intention and such report, if made by any such association, shall be signed by at least two officers thereof. Provided, that when any such solicitation is made by any such association such report need be filed only by such association and not by an individual solicitor engaged in any such solicitation.

Sec. 44.15. Contributions—Receipt, Contents of

No person shall solicit any contribution for any charitable purpose unless such person shall tender to each person making such contribution a written receipt signed by the solicitor which contains in addition to a description of the amount and kind of the contribution, substantially the following matters:

(a) The name of the association, if any, in whose name or upon whose behalf the solicitation is made.

(b) A statement as to whether the contribution solicited is to be applied for the general purposes of such association, if any, or for specific purposes, and if for specific purposes the nature thereof shall be clearly stated.

(c) A statement that the Information Card, issued by the Department, was presented to the person making the contribution for his perusal prior to receipt by the solicitor of the contribution receipted for.

Provided, however, that no receipt need be given or tendered if donation of money is made by placing of the same in a locked receptacle, of a kind previously approved by the Board, in such manner that it is impracticable to ascertain either the amount donated or the name of the donor, and if an inscription shall be conspicuously attached to such receptacle containing in legible writing a copy of

such Information Card issued by the Department and the statement required to be set forth in the receipt hereinbefore in this Section referred to, except the statements regarding such information card, and if such receptacle bears a number or other mark of identification, and if a written list showing by number the location or name of the solicitor in charge of each receptacle, if there be more than one such receptacle shall have been previously filed with the Department. Provided, further, that no receipt need be given for any donation of money in an amount less than $1.00.

Sec. 44.16. Certain Provisions Not Applicable, When:

The provisions of this Article, except Sections 44.01 and 44.04, shall not be applicable to any solicitation made upon premises owned or occupied by the association upon whose behalf such solicitation is made, nor to any solicitation for the relief of any individual specified by name at the time of the solicitation where the solicitor represents in each case that the entire amount collected, without any deduction whatever, shall be turned over to the named beneficiary, nor shall they be applicable to any association soliciting contributions solely from persons who are members thereof at the time of such solicitation, nor shall they be applicable to solicitations made solely for evangelical, missionary or religious purposes. Provided, however, that in any case where it shall come to the attention of the Board that any solicitation has been or is being or intended to be made for evangelical, missionary or religious purposes but in such manner as in the opinion of the Board is calculated to give or may give the impression to the person or persons solicited in any such solicitation or to the public that the purpose of such solicitation is either in whole or in part charitable, then the Board, if in its opinion the public interest will be subserved thereby, shall investigate the matter of such solicitation and give publicity to its findings thereon in such manner as it may deem best to advise the public of the facts of the case.

Sec. 44.17. Soliciting from Vehicles:

No person shall park or stand any vehicle on any street within the Central Traffic District, as said district is defined

in Section 80.00; for the purpose of soliciting funds to any charitable institution, or otherwise.

Sec. 44.18. [Added by Ordinance No. 80,920, approved March 1, 1939.] Telephone Solicitations.

(a) No person shall for pecuniary compensation or consideration conduct or make any solicitation by telephone for or on behalf of any actual or purported charitable use, purpose, association, corporation or institution.

(b) The provisions of Subsection (a) hereof shall not apply to any communication by telephone between persons personally known to each other.

Sec. 44.19. [Added by Ordinance No. 80,920, approved March 1, 1939.]

(1) Promoters.

No promoter shall in any manner whatsoever, solicit within the City of Los Angeles any contribution for any actual or purported charitable use, purpose, association, corporation or institution without a license from the Board so to do.

(2) Application.

To obtain such license, such promoter shall make and file with the Board an application therefor in writing. In such application, the applicant shall set forth, in addition to such information as may be required by the Board:

(a) The name and address of the applicant, and if such applicant be a corporation, the name and address of each of its managing officers and agents, and, if it be an unincorporated association, firm or partnership, the name and address of each member of such unincorporated association, firm or partnership;

(b) A succinct statement of facts showing that the applicant, if not a corporation or an unincorporated firm, association or partnership, is of good character and reputation, or if the applicant be a corporation that each of its managing officers and agents is of good character and reputation, or

if the applicant be an unincorporated association, firm or partnership, that each of its members is of good character and reputation.

(c) The general plan, character and method in or by which applicant proposes to conduct its or his business as a promoter.

(3) Bond.

(a) [As amended by Ordinance No. 81,618, approved Sept. 15, 1939.]

At the time of so filing with the Board an application for such license the applicant shall file and thereafter maintain with the Board a good and sufficient bond in the aggregate sum of Two Thousand Dollars ($2,000) running to the City of Los Angeles for the use and benefit of interested persons and parties, executed by the applicant and by two or more responsible sureties, or a surety company authorized to do business in the State of California, to be approved by the Board. The total aggregate liability on said bond shall be limited to the payment of Two Thousand Dollars ($2,000). Said bond shall be conditioned upon the strict compliance, by the Principal, with the provisions of this Article and the payment of any direct pecuniary loss sustained, through any act of grand or petty theft on the part of the Principal, by any donor or by any person on whose behalf the funds or personal property were solicited or received by the Principal.

(b) Said bond shall remain in force and effect until said bond and undertakings in the solicitation of contributions by the promoter is cancelled by the sureties. The sureties may cancel said bond and be relieved of further liability thereunder by delivering thirty days' written notice to the Board. Such cancellation shall not affect any liability incurred or accrued thereunder prior to the termination of said thirty (30) day period.

(c) Any person who sustains any injury covered by said bond, may in addition to any other remedy that he may have, bring an action in his own name upon said bond for the recovery of any damage sustained by him.

(d) Upon such action being commenced, such bond shall not be void upon first recovery thereon, but may be sued upon from time to time until the whole of such penalty shall be exhausted. The Board may, in its discretion, require the filing of a new bond, and immediately upon the recovery in any action on such bond, such promoter shall file a new bond, and upon failure to file the same within ten (10) days in either case, the Board shall forthwith suspend such promoter's license to solicit.

(e) The time within which any action may be brought against a surety upon any bond filed hereunder may, by express provision of the bond to that effect, be limited to a period of two (2) years from and after the discovery, by the person aggrieved, of the act or default complained of.

(4) Fee.

For filing such application the applicant shall pay a fee of $25.00 to the Board.

(5) Investigation.

The Board shall examine such application and shall make such further investigation of the applicant and its or his affairs as the Board shall deem advisable. If from such examination the Board shall be satisfied:

(a) That the applicant is of good character and reputation, or—

That every managing officer or agent of the applicant if the applicant is a corporation, is of good character and reputation, or if the applicant is an unincorporated association, firm or partnership, each member thereof is of good character and reputation.

(b) That applicant has sufficient financial responsibility to carry out the obligations incident to any solicitation such applicant may make within the City of Los Angeles as such promoter and that all of the statements made in such application are and each of them is true and that neither the applicant nor any officer, agent or member of the applicant has violated any of the provisions of this Article or

has engaged in any fraudulent transaction or enterprise, and that the applicant intends to conduct its business fairly and honestly, the Board shall issue to the applicant a license to solicit as a promoter within the City of Los Angeles, contributions. Otherwise, the Board shall deny the application and refuse to issue a license, and shall notify the applicant of the decision of the Board.

Provided, however, that if the only ground for such refusal or denial is such that it does not substantially affect applicant's honesty and integrity and if the inability of the applicant to meet any requirement will not in any way interfere with a proper performance by the applicant of his duties as such promoter, the Board may, in its discretion, waive such ground and grant the application; this proviso relates only to paragraphs (a) and (b) of this subsection.

(6) Revocation.

All licenses issued hereunder shall be subject to the condition that the applicant thereafter shall cease and desist from acting as a promoter within said City of Los Angeles when ordered so to do by the Board if the Board finds after a hearing, upon notice as provided in Section 22.02 of this Code, that any act or omission of such promoter or his agents or employees in making any solicitation or in the conduct of the business of promoter within the City of Los Angeles is unfair, unjust, inequitable or fraudulent. The Board must suspend or revoke any such license if, after hearing upon notice, the Board shall find the existence of any of the grounds hereinabove enumerated for the denial of an application for a promoter's license; provided, however, that such suspension or revocation shall be discretionary with the Board if the only ground for such revocation is such that it does not affect the licensee's honesty and integrity, or his ability properly to perform his duties as a promoter.

(7) Termination.

Every such license shall terminate or expire at the end of the year terminating on the 30th day of June in which such license is issued.

(8) Funds.

No promoter shall commingle any contribution with the promoter's own funds or property, or fail at any time to maintain and keep all contributions separate and apart from the promoter's own funds or property.

(9) [Added by Ordinance No. 81,618, approved Sept. 15, 1939.]

Solicitors.

(a) It shall be unlawful for any promoter to cause or permit any person for pecuniary compensation or consideration received or to be received by such person to solicit or receive on his behalf or at his instigation, under his direction or control or in his employment, any contribution unless such person shall be registered as a solicitor by the Board.

(b) [As amended by Ordinance No. 88,957, approved Dec. 13, 1944.]

Except as provided in Subsections (1) to (8), inclusive, of this section, no person shall for pecuniary compensation or consideration solicit contributions for or on behalf of any other person, charitable association, corporation or institution unless such person be first registered by the Board. No person shall be so registered unless he shall first furnish satisfactory proof to the Board that he is a person of good moral character, that his reputation for honesty is good, and unless he first file with the Board, and thereafter maintain, a bond satisfactory to the Board and approved by the City Attorney in the sum of $500.00, conditioned for the payment of any direct pecuniary loss which may be sustained by any donee or by any person, corporation or association on whose behalf any contribution was solicited or received through any act of grand or petty theft committed by such person.

(c) The provisions of paragraphs (b), (c), (d) and (e) of subsection (3) above shall apply to bonds filed pursuant to this subsection.

(d) The Board shall collect a fee of One Dollar ($1.00) for each such registration.

(e) [As amended by Ordinance No. 88,957, approved Dec. 13, 1944.]

The registrant must notify the Board in writing of any change of address, and if the registrant be employed by more than one person, association, corporation or institution, he must inform the Board in writing of such fact and of any subsequent termination or change of employment.

(f) [Added by Ordinance No. 88,957, approved Dec. 13, 1944.]

Each registration required by this subsection shall terminate at midnight June 30th of each year. Thereafter such registrant shall be re-registered by the Board upon the payment of a fee of $1.00, and the posting of a bond in the sum of $500.00. Such bond shall comply with the requirements of subdivisions (b) and (c) hereof.